IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 16330 of 2006(S)

PETITIONERS:

1. UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI.

2. THE DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695 014.

BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS

RESPONDENTS:

1. P.VARGHESE, NELLIVELAYIL VEEDU, MADICHAL POST, KANYAKUMARI DISTRICT, TAMIL NADU-629 163.

2. ANPALATH, PANDARAVILAYAIL VEEDU, MARATHAMCODE P.O. KANYAKUMARI DISTRICT, TAMIL NADU-629 163.

BY ADV. SRI.C.S.AJITH PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007 ALONG WITH WPC NO. 21777 OF 2007 AND CON. CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 16630/06

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF RAILWAY BORAD'S LETTER NO.E(NG)II/19/CL/71 DT. 25.7.91

EXT. P2 TRUE COPY OF RAILWAY BOARD'S LETTER NO.E(NG)II/99/CL/19 DT. 20.9.01

EXT. P3 TRUE COPY OF LETTER NO.P(S)407/FILLING UP OF VACANCIES OF TRACKMAN (GANGMAN) DT. 27.1.03

EXT. P4 TRUE COPY OF OA 145/04 FILED BEFORE THE CAT, ERNAKULAM BENCH

EXT. P5 TRUE COPY OF THE REPLY STATEMENT DT. 25.6.04 IN OA 145/04

EXT. P6 TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT IN OA 145/04

EXT. P7 TRUE COPY OF THE ADDL. REPLY STATEMENT DT. 2.3.05 FILED BY THE RESPONDENTS IN OA 145/04

EXT. P8 TRUE COPY OF THE ADDL. REJOINDER FILED BY THE APPLICANT IN OA 145/04

EXT. P9 TRUE COPY OF THE ORDER OF THE CAT DT. 10.2.06 IN OA 145/04

EXT. P10 TRUE COPY OF ORDER DT. 30.3.04 OF CAT, ERNAKULAM IN OA 633/03

EXT. P11 TRUE COPY OF ORDER DT. 31.3.04 OF CAT ERNAKULAM IN OA 37/03

EXT. P12 TRUE COPY OF COMMON JUDGMENT DT. 5.10.05 IN WPC 30832/04 AND 30328/04 OF THIS HON'BLE COURT

EXT. P13 TRUE COPY OF ORDER DT. 22.3.06 OF CAT MADRAS BENCH IN OA 454/05

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)Nos.3246, 16330 & 17375
of 2006, 21777 & 26308 of 2007

COMMON JUDGMENT

Balakrishnan Nair, J.

Common questions arise for decision in these writ petitions. Therefore, they are heard and disposed of by this common judgment.

W.P.(C)No.16330/2006

2. The petitioners herein challenge the order of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.145/04. The applicants therein, who are respondents 1 and 2 herein, were the Ex-casual labourers, who worked in the Project Section of the Railways. They have worked respectively for 664 days and 671 days. In the list of live casual labourers prepared and maintained by the Thiruvananthapuram Division for absorption to Group

D posts, they were Sl.Nos.2083 and 2047. They were called for considering them for regular absorption in the Railway Establishment as per call letter dated 24.3.2003, which is Annexure-A4 to Exhibit P4 original application. Their claim for regularisation in service was rejected by the Railways saying that they are over aged. According to the Railways, the upper age limit for General candidates is 40, for OBC candidates 43 and for SC-ST candidates 45. This age limit is insisted upon, relying on the Railway Board Circulars RBE No.42/01 dated 28.2.2001 and also RBE No.190/01 dated 20.9.2001. The Tribunal, after hearing both sides, allowed the Original Application, relying on one of its earlier judgments in O.A.No.386/05 dated 30.3.2004, which, in turn was rendered relying on the judgment in O.A.No.633/03. The Tribunal also noticed that the latter judgment has been affirmed by a Division Bench of this Court in W.P.(C) No.30832/04 dated 5.10.2005. The judgment of the Tribunal in O.A.No.633/03 is produced in this writ

petition as Exhibit P10 and the judgment of this Court is produced as Exhibit P12. The Tribunal directed that without applying the age limit, the claim of the applicants have to be considered.

3. The Railways challenge the said order in this writ petition contending that even in the case of absorption of Ex-casual labourers, the age limit prescribed is applicable.

W.P.(C)No.17375/2006

4. The petitioners herein challenge the order of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.386/05. The applicants in the said Original Application are the respondents herein. They were included in the live casual register of Ex-casual employees, respectively as Sl.Nos.2225 and 2513. They have rendered casual service for 522 days and 209 days respectively. According to their seniority in the list, they were called for undergoing the selection process for absorption by Annexure-A1 communication dated 20.6.2003 attached

to Exhibit P4 original application. The said Original Application was allowed by the Tribunal, relying on its earlier judgment in O.A.No.633/03, which was affirmed by a Division Bench of this Court in W.P.(C)No.30832/04. Here also, the dispute was concerning the age limit. According to the Railways, the applicants were over aged. But, the Tribunal overruled their contentions and directed to absorb the applicants ignoring the crossing of age limit, provided they are otherwise eligible. This writ petition is filed challenging the said direction of the Tribunal.

W.P.(C)No.21777/2007

5. This case is treated as the main case for referring to the exhibits hereafter. The petitioners herein are the respondents in O.A.No. 271/06. The said Original Application was disposed of by Exhibit P3 judgment of the Central Administrative Tribunal, Ernakulam Bench dated 14.3.2007, along with a few other Original

Applications. Respondents, 21 in number, were the applicants in the said original Application. The following are the details of the applicants in the Original Application, concerning their seniority position in the live register of casual labourers and the number of days they have worked.

SL.NO.	NAME	AGE	SR.LIST	DAYS
1.	A.Sasidharan	50	1911	957
2.	A.Devadhas	47	2344	311
3.	M.Krishna Prasad	49	2018	689
4.	Thiruvazhimarban	52	2017	690
5.	M.Charles	50	2799	142
6.	Y.Yesudasan	50	1972	940
7.	S.Mariadas	46	2204	529
8.	P.Bhuvanachandran	50	2306	367
9.	G.Vijayan	49	2113	630
10.	C.Pandian	55	2315	348
11.	R.Balakrishnan	47	2983	69
12.	A.Maria George	51	2246	478

13.	M.Rajendran	45	2952	93
14.	T.Sivasankaran	47	2042	674
15.	T.Maharaja Pillai	50	2082	664
16.	A.Thinnavanam	54	1909	957
17.	R.Krishna Paul	50	1933	954
18.	G.Sunder Rajan	51	2097	656
19.	R.Suresh Lal	50	1950	954
20.	A.Athinarayanan	54	2077	666
21.	S.Chellathurai	54	2199	622

Respondents 1,6,16,17 and 19 were called for verification of records in 1998, apparently for considering them for absorption. Later, they, along with others, were called for undergoing the selection process as per Annexure-A1 dated 24.3.2003 of Exhibit P1 original application. Among respondents, serial numbers 2,5,7,8 and 10 to 13 were called for selection as per communication dated 20.6.2003, which is Annexure-A2 of Exhibit P1. In the selection process, all the respondents

were overlooked for the reason that they have already crossed the age limit prescribed by the Railway Board, which was mentioned earlier as 40, 43 and 45 respectively for General candidates, OBC candidates and SC-ST candidates. Challenging the said stand of the Railways, the Original Application was filed. The Tribunal allowed the Original Application as in the case of other Original Applications, relying on its own earlier judgment in O.A.No.633/03 as also the Division Bench judgment of this Court, affirming the same. In this case, the Tribunal has gone to the extent of quashing Exhibit P6 circular of the Railway Board dated 28.2.2001 and also Annexure-R1 circular dated 20.9.2001 of the Railway Board, produced along with Exhibit P2 reply statement. A direction was also issued to consider the case of the applicants for appointment,if they are otherwise eligible, ignoring the prescription of age limit.

6. According to the Railways, there was always prescription of age limit in the matter of

absorption of casual labourers. It was relaxed from time to time and the extant orders are those dated 28.2.2001 and 20.9.2001, mentioned above. The direction issued by the Tribunal to ignore those orders is unsustainable. They would also contend that there was no challenge against those circulars in the aforementioned Original Applications, from which, the above three writ petitions arise. Therefore, quashing of those orders is unjustified. The learned counsel for the Railways further submitted that the decision in O.A.No.633/03 was affirmed by a Division Bench of this Court in W.P.(C)No.30832/04 without adverting to the relevant Rules. Therefore, the said decision of the Division Bench requires re-consideration. At any rate, O.A. No.633/03 was filed by the applicants, who were considered initially in 1998 and thereafter, again in 2003, pursuant to Annexure-A1 call letter attached to Exhibit P1. Candidates up to Sl.No. 2000 in the live register of casual employees were considered in 1998. Again, they were considered as

per the above said call letter dated 24.3.2003. Their case alone can be said to be similar to the candidates in O.A.No.633/03. So, the application of the said decision in relation to other applicants in the aforementioned Original Applications is unjustified, it is submitted. In other words, the benefit of the decision in O.A.No.633/03 will be available only to Respondent Nos.1,6,16,17 and 19 in W.P.(C)No.21777/07.In that Original Application, the reasoning adopted by the Tribunal was that the applicants were considered in 1998, when there was no prescription of age limit. Exhibit P6 and Annexure-R1 to Exhibit P2 were introduced only in 2001. Therefore, those orders cannot be made applicable to the candidates, who were initially considered in 1998. Going by the said reasoning, the learned counsel submitted that in the case of others, the age restrictions will be applicable even according to the decision of the Tribunal in O.A.No.633/03. Therefore, the Original Applications filed by the candidates, having rank above 2000 in

the live register of casual employees, are liable to be dismissed.

7. The learned counsel for the applicants, who are the party respondents in the above writ petitions, contended that in the light of the judgment in **Inder Pal Yadav v. Union of India** ((1985) 2 SCC 648) those casual labourers, who have completed 360 days of service in terms of the scheme contained in the said judgment, have acquired temporary status. Going by the directions in that judgment in paragraphs 5 and 6, all such casual labourers, who have acquired temporary status, are liable to be absorbed in the regular establishment. The criteria for absorption shall be the length of service, irrespective of the age of the candidates, who have acquired temporary status. So, they are liable to be absorbed, it is submitted. Exhibit P11, which is a Circular of the Railway Board (RBE 167/86), contains the consequential scheme issued pursuant to **Inder Pal**

Yadav's case (cited supra). In the light of the said scheme, list of casual labourers has been prepared and published in Thirvananthapuram Division. All those, who are shown as having 360 days of service in that list, are liable to be absorbed, it is submitted. The positive direction in **Inder Pal Yadav's case** (cited supra) is for absorption of such casual labourers, who deemed to have acquired temporary status on completion of 360 days of service, it is contended.

8. The learned counsel further points out that by insisting upon the age limit, several persons, who have acquired 360 days of service, have been screened out. Further, many persons, with a few weeks' service, have been regularised also on the ground that they are young persons within the prescribed age limit. So, the contention of the Railways that persons, with a few days' service in the Railways as casual labourers, who are within the prescribed age limit, alone are liable to be absorbed in the light of the extant Rules in force,

is unsustainable in law. As far as the persons, enlisted as per **Inder Pal Yadav's case** (cited supra), are concerned, they have a right to be absorbed irrespective of their age, it is submitted.

9. In answer, the learned counsel for the Railways would rely on Annexures-R4, R7 as also Exhibits P12 and P13. Those documents would show that even in the case of persons, who have acquired temporary status, they can be absorbed in the regular establishment in Group D post, if only they are within the prescribed age limit. The learned counsel appearing for the party respondents in W.P.(C)No.16330/06 submitted that the party respondents therein were persons, who were retrenched before 1.1.1981 and they have applied for absorption before 31.3.1987 in the light of the directions contained in the judgment of the Apex Court in **Dakshin Railway Employees Union, Trivandrum Division v. General Manager, Southern Railway**

((1987) 1 SCC 677). The learned counsel also pointed out that there was considerable delay from the part of the Railways to consider their claim for absorption and therefore, they became over aged. It is also pointed out that the persons, like the party respondents herein, were ordered to be absorbed in regular establishment in Group D posts. No restriction, with reference to the age limit, was ordered either in **Inder Pal Yadav's case** (cited supra) or in **Dakshin Railway Employees Union's case** (cited supra). The Railways cannot take advantage of their own default to implement the scheme in time, it is submitted.

10. The learned counsel for the Railways, in answer, submitted that as per the Rules, there was an existing scheme to grant temporary status to the casual employees with 120 days' of service in the open line. The casual workers in the projects were never considered for absorption. The clamour was for equal treatment. The same was ordered to be

granted by the Apex Court as per **Inder Pal Yadav's case** (cited supra). So, the casual workers in the projects, who are the beneficiaries of the said scheme, cannot be put on a higher pedestal than the existing casual employees in the open line, who were entitled to be granted temporary status on completion of 120 days' service and later, absorption to regular service. In fact, vacancies were not available for absorption of the beneficiaries of the decision in **Inder Pal Yadav's case** (cited supra). There is no wilful delay or laches. By the time the vacancies arose and the applicants concerned were considered, they crossed the prescribed age limit and therefore, they were rightly screened out by the Railways, it is submitted.

11. Finally, the learned counsel for the Railways contended that the Tribunal's order runs counter to the decision of the Apex Court in **Secy., State of Karnataka v. Umadevi(3)** ((2006) 4 SCC 1) and therefore, the same is liable to be set aside.

12. We have given anxious consideration to the contentions of both sides. Going by **Inder Pal Yadav's case** (cited supra), those who acquire 360 days' service are entitled to be absorbed into the regular establishment. It is common case that before 2001, without any reference to the age limit and in many cases, without insisting for the completion of 360 days' service, the persons included in the live register of casual labourers were absorbed into Group D post. After the judgment of the Apex Court in **Inder Pal Yadav** (cited supra), there was considerable delay in considering the claim of the party respondents before us, who were the applicants before the Central Administrative Tribunal. The party

respondents would accuse the Railways for the delay, as a result of which they became over-aged. The Railways would submit that there were not sufficient number of vacancies and as and when vacancies arose, the exercise of absorption was being undertaken.

13. We notice that the applicants belong to a vanishing category and a liberal view was taken by the Tribunal in their case. The said view taken in a similar case by the Central Administrative Tribunal has been affirmed by a Division Bench of this Court also in W.P.(C)No.30832/04. The relevant portion of the said judgment reads as follows:

> "The Tribunal had noticed that these instructions had come long after the petitioners had been brought to the live register and the Railway Administration had not taken note of the circumstances that it was not a case of fresh recruitment as such. There was no

> such embargo, prescribed as could be gathered from the judgment of the Supreme Court in Inderpal Yadav. It was for the above reason that the Tribunal had directed that the cases of applicants should be considered ignoring the age factor.
>
> The applicants are a vanishing group and as the view point of the Railway Administration had also been taken notice of, we do not think that the stand taken by the Tribunal was so unreasonable for this Court to interfere."

We notice that the above judgment has become final, as the Railways did not challenge it before the Honourable Supreme Court. So, we are also of the view that it is not just or proper to interfere with the order of the Central Administrative Tribunal, insofar as it directs absorption of casual labourers, who have completed 360 days'

service. The Tribunal has set aside the Railway Board's Circular Nos.E(NG)II-99/CL/19 dated 28.2.2001 and E(NG)II/99/CL/19 dated 20.9.2001. We notice that, in these writ petitions, there was no prayer for quashing those circulars. Therefore, the same is unjustified. Even if those circulars are not quashed, still, the applicants are entitled to get relief, as they were being absorbed on the strength of the judgment in **Inder Pal Yadav's case** (cited supra). The said judgment and the subsequent orders issued by the Railways do not prescribe any age limit in the matter of absorption. Only for the first time age limit was insisted after the issuance of the above said circulars. So, we declare that both the circulars will not apply to the absorption of casual labourers, who have completed 360 days' service and are being absorbed as per the decision in **Inder Pal Yadav's case** (cited supra). The **Umadevi's case** (cited supra) has no application to the facts of this case, as in

this case, the absorption is being made by the Railways as per the order of the Apex Court in **Inder Pal Yadav's case** (cited supra). The only dispute is regarding the age limit. The liability for absorption does not emanate from the order of the Tribunal.

In the result, these writ petitions are disposed of issuing the following modifications to the order of the Central Administrative Tribunal:

The age limit prescribed as per Circular Nos.E (NG)II-99/CL/19 dated 28.2.2001 and E(NG)II-99/CL/19 dated 20.9.2001 will not be applicable to the casual labourers, who have completed 360 days' service. Quashing of the above said circulars is set aside. Even though the age limit is not applicable to absorption, other stipulations in the Rules like medical fitness, etc. can be insisted by the Railways.

W.P.(C)Nos.3246/2006 & 26308/2007

These writ petitions arise out of the dispute regarding absorption of casual labourers in Palakkad Division. The point that arises for decision in these writ petitions is also identical to the point considered in the above writ petitions, which we have already disposed of. Therefore, it is ordered that the directions issued in W.P.(C)No.16330/06 and connected cases will govern these cases also. No costs.

(K.Balakrishnan Nair, Judge)

29th November, 2007

(K.P.Balachandran, Judge)

tkv